

Date of Hearing: August 24, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Sebastian Ridley-Thomas, Chair
SB 49 (Runner) – As Amended June 23, 2015

SENATE VOTE: 38-0

SUBJECT: Elections: special elections.

SUMMARY: Permits the Governor to declare a candidate for legislative office elected at a special primary election to fill a legislative vacancy, as specified. Specifically, **this bill:**

- 1) Authorizes the Governor, if only one candidate for a legislative office qualifies to have his or her name printed on a special primary election ballot to fill a legislative vacancy, to declare the candidate elected.
- 2) Provides that the special primary election and special general election will not be held if the Governor declares a candidate elected pursuant to the provisions of this bill and requires the Governor to rescind the proclamation calling the special election.
- 3) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Requires the Governor, whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, Secretary of State (SOS), Controller, Treasurer, or Attorney General, or on the State Board of Equalization, to nominate a person to fill the vacancy who shall take office and hold the office for the balance of the unexpired term upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly, as specified.
- 2) Requires the Governor, within 14 calendar days of the occurrence of a vacancy in a congressional or legislative office, to issue a proclamation calling a special election, as specified.
- 3) Provides that no special election shall be held if a vacancy occurs in a legislative office after the close of the nomination period in the final year of the term of office.
- 4) Requires a special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of the Assembly to be conducted on a Tuesday at least 126 days, but not more than 140 days, following the issuance of an election proclamation by the Governor, except that the special election may be conducted within 180 days following the proclamation in order for the election or the primary to be consolidated with the next regularly scheduled statewide election or local election occurring wholly or partially within the same territory in which the vacancy exists, provided that the voters eligible to vote in the local election comprise at least 50 percent of all the voters eligible to vote on the vacancy.
- 5) Requires a special primary election to be held in the district in which the vacancy occurred on the 9th or 10th Tuesday preceding the day of the special general election at which the vacancy is to be filled, as specified.

- 6) Requires the nomination papers for the special vacancy elections described above to be submitted to the appropriate county elections official for examination not less than 53 days before the primary election.
- 7) Requires every person who desires to be a write-in candidate and have his or her name written on the ballot of an election counted for a particular office to file with the appropriate elections official a statement of write-in candidacy no later than 14 days prior to the election.
- 8) Prohibits a person from being a write-in candidate at the general election for a voter-nominated office.
- 9) Provides that if any candidate receives a majority of all votes cast at a special primary election, he or she shall be declared elected, and no special general election shall be held.
- 10) Provides that if only one candidate qualifies to have his or her name printed on the special general election ballot, that candidate shall be declared elected, and no special general election shall be held.
- 11) Provides that if only one person has filed nomination papers for a municipal office, the governing body of the city may appoint that person to the office instead of holding the election.
- 12) Provides that if only one person has filed nomination papers for a district office, the supervising authority of the district may appoint that person to the office instead of holding the election unless a petition is filed that is signed by 10 percent of the voters or 50 voters, whichever is the smaller number, in the district or division if elected by division, requesting that the general district election be held.
- 13) Provides that if only the incumbent has filed nomination papers for the office of superior court judge, his or her name will not appear on the ballot unless within 10 days after the filing deadline a petition is filed indicating that a write-in campaign will be conducted for the office which is signed by one-tenth of one percent of the registered voters qualified to vote for that office, except that the petition must have no fewer than 100 and does not need more than 600 signatures.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Earlier this year a special election was conducted to fill a vacancy in Senate District 21. Senator Runner was the only candidate who qualified to appear on the ballot. A similar circumstance prevailed during the election of Senator Carol Migden in 1996. In fact, since 1979 there has only been 3 instances where this was the case. While most candidates may desire an election where they are the only qualified candidate on the ballot, I was troubled by the enormous cost to our counties and ultimately to taxpayers to

conduct such an election. In the Senate District election to fill the vacancy, Los Angeles County spent \$1.4 million while San Bernardino incurred costs of \$221,000.

- 2) **New Authority for the Governor:** Article 5, Section 5 of the California Constitution vests the Governor with appointing authority to fill vacancies in specified offices. Specifically, Section 5 requires the Governor, whenever there is a vacancy in the office of the Superintendent of Public Instruction, Lieutenant Governor, SOS, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, to nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly. However, if there is a congressional or legislative vacancy, state law requires a special election to be held to fill that vacancy, as specified. This bill provides the Governor with new authority to declare a candidate for legislative office elected to fill a legislative vacancy. Specifically, this bill authorizes the Governor to declare a candidate elected to fill a legislative vacancy if only one candidate qualifies to have his or her name appear on the special primary election ballot. In addition, this bill provides that the special primary election and special general election will not be held if the Governor declares a candidate for legislative office elected pursuant to the provisions of this bill and requires the Governor to rescind the proclamation calling the special elections.
- 3) **Recent Proliferation of Special Vacancy Elections:** Since 2009, there have been a total of 37 special elections to fill legislative vacancies in California, the majority of which were not consolidated with statewide elections. Special vacancy elections are generally unexpected; therefore, counties cannot forecast the cost in their budgets. According to county elections officials affected by special elections, costs associated with conducting special elections result in an average of \$1 million, depending on the size of the county or counties affected. Costs are much lower if the vacancy election is consolidated with another election.
- 4) **State Funding of Vacancy Elections:** From 1993 through 2007, the state reimbursed California counties for the costs of special elections held to fill legislative and congressional vacancies. However, the provision of state law that required the state to reimburse counties for these costs expired January 1, 2008. Since 2008, numerous bills to continue state reimbursement have all failed passage in the Legislature.

Following the expiration of reimbursement provisions, counties have been forced to redirect important resources budgeted for critical community services to cover the unanticipated costs of conducting mandated special elections.
- 5) **Filling Legislative Vacancies in Other States:** According to the National Conference of State Legislatures (NCSL), states vary widely on how they fill a legislative vacancy. In general, a vacancy is filled either through a special election or by appointment. According to NCSL, 25 states hold a special election to fill a vacancy. These elections may be ordered by the governor or other official after being notified of the vacancy. The other 25 states fill a vacancy through some form of appointment process. Again, there is considerable variation among the states in terms of who makes the appointment, and whether the appointee must be of the same political party as the person vacating the seat.
- 6) **No Write-In Candidates Allowed:** While current law prohibits a person from being a write-in candidate at a general election for a voter-nominated office, it permits write-in candidates

at primary elections. Existing law requires a candidate's nomination papers for a special primary election to be submitted to the appropriate elections officials for examination and filed with the SOS not less than 53 days prior to the primary election. A write-in candidate, however, is required to have his or her nomination papers filed 14 days prior to the election. This bill permits the Governor to cancel a special primary election and a special general election for a legislative vacancy if only one candidate files his or her nomination papers by the deadline and qualifies to have his or her name appear on the special primary ballot. In other words, if only one candidate submits his or her nomination papers by the 53-day deadline and qualifies to have his or her name on the special primary election ballot, the provisions of this bill authorize the Governor to declare that candidate for legislative office elected. As a result this would preclude potential write-in candidates from being able to seek the office as the deadline to file nomination papers for a write-in candidate is 14 days prior to the election. As mentioned above, such a precedent exists for some local offices although in some cases, voters can force the election to be held by filing a petition containing a specified number of signatures. According to the SOS's certified list of write-in candidates for this year's special primary election for Senate District 21, six write-in candidates qualified to have votes counted for their candidacies at the special primary election.

- 7) **Related Legislation:** AB 971 (Chang), requires the state to pay for all expenses authorized and incurred in the preparation for and conduct of a special election proclaimed by the Governor to fill a legislative or congressional vacancy, as specified. This bill was held on the Assembly Appropriations Committee's suspense file.
- 8) **Previous Legislation:** SCA 16 (Steinberg) of 2014, would have required the Governor to fill a vacancy in either house of the Legislature by appointment within 21 days of the date of the vacancy, as specified. SCA 16 was never heard in this committee.
- 9) **Arguments in Support:** In support, the California State Association of Counties writes:

While this circumstance does not frequently occur, this measure is still important for two reasons. First, it could provide significant cost savings for the counties where a special election must be held to fill a vacancy. It is estimated that the four special elections scheduled for 2015 alone could total as much as \$6 million dollars. As you may know, the cost burden for elections to fill state legislative... seats falls to the county. There is currently no reimbursement for this type of contest. Second, following action by the Secretary of State, legislative... vacancies could be filled more quickly and reduce the gap in representation for local communities.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials
California State Association of Counties
County of San Bernardino
Sacramento County Board of Supervisors

Opposition

None on file.